

## LABOUR DEPARTMENT

The 24th October, 1994

No. 14/13/87-6Lab./749. In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of M/s President, M. C. Bhiwani *versus* Sukhbir Singh.

BEFORE SHRI B. R. VOHRA PRESIDING OFFICER, INDUSTRIAL-TRIBUNAL-CUM-LABOUR COURT HISAR.

Reference No. 679 of 1990

Date of receipt: 7-3-89

Date of decision: 3-10-94

SHRI SUKHBIR SINGH, S/O SHRI PHOOL SINGH, VILLAGE BAMLA, DISTRICT BHIWANI.

.. Applicant

*Versus*

(1) PRESIDENT MUNICIPAL COMMITTEE, HEAD OFFICE, BHIWANI, IMPROVEMENT TRUST, BHIWANI.

(2) CHIEF EXECUTIVE ENGINEER, BHIWANI IMPROVEMENT TRUST, BHIWANI.

.. Respondent-Management

*Present :*

Shri Chetan Anand, for the workman

Shri S. S. Gupta, for the management.

## AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short, the Act) the Governor of Haryana referred the following dispute between Sukhbir Singh and the above mentioned management for adjudication to this Court,—*vide* Labour Department letter No. 9426—31, dated 1st March, 1989 :—

Whether services of Shri Sukhbir Singh, were terminated or he lost the lien by absenting himself ?  
In either event, to what relief is he entitled ?

2. According to the workman, he was appointed as Mali-cum-Chowkidar by Improvement Trust, Bhiwani on 16th November, 1984 on daily wages and that he worked as such upto September, 1987, whereafter his services were terminated illegally. According to him, as he has completed more than 240 days job, he could not be removed from service except by giving him one month notice and retrenchment compensation as required under Section 25-F of the Act. He therefore, prayed for reinstatement with full wages and other consequential benefits.

3. In the written statement filed by the management, it was pleaded that the workman stopped coming to work at his own from 6th September, 1987 and it was denied that his services were terminated. It was further pleaded that there being no work, some employees were retrenched in the month of January, 1988 and that Sukhbir Singh was not on rolls at that time. According to the management, the workman raised this dispute after the said retrenchment of other employees with a view to derive undue benefits.

4. On the pleadings of the parties, the following issues were framed on 2nd January, 1990 by the Presiding Officer, Labour Court, Rohtak :—

- (1) Whether the workman left his services of his own accord ?
- (2) As per terms of reference.

5. The parties led evidence in support of their rival claims. I have heard Shri Chetan Anand Authorised Representative of the workman and Shri S. S. Gupta, Authorised Representative of the management and have gone through the case file. My findings on the above issues are as under :—

**Issue Nos. 1 & 2 :**

6. Both these issues are inter connected and as such, are being taken up together for purposes of facility.

7. Sukhbir Singh, who appeared as WW-1, has deposed that he worked as Mali-cum-Chowkidar in Improvement Trust, Bhiwani from 16th November, 1984 to 6th September, 1987, whereafter he was removed from services without issuing any notice and without paying him any retrenchment compensation. In his cross-examination, he has admitted that after 6th September, 1987, the date of termination of his services, he did not make any written representation challenging his termination except when he raised the demand notice for the first time on 21st November, 1988. He also admitted that in January, 1988, some employees were retrenched by the management, after paying them retrenchment compensation and that his name did not figure in that list because he had been removed prior thereto.

8. Shri R. K. Sharma, Head Clerk, who appeared as MW-1, has deposed that the workman had worked from November, 1984 to 5th September, 1987 and that the workman absented from duties with effect from 6th September, 1987. He also claimed that in January, 1988, a number of employees were retrenched for want of work and that these employees were paid retrenchment compensation as required under the Act.

9. Since it is admitted by R. K. Sharma, MW-1 that the workman had worked from November, 1984 to 5th September, 1987, it stands established that he had worked for more than two years continuously. Admittedly, no notice as required under Section 25-F of the Act, was given to him, nor any retrenchment compensation was paid to him in September, 1987. There is also no evidence on the file that the management had issued any notice to the workman at the available address to resume his duties. The workman Sukhbir Singh has claimed that he had been visiting the Engineer several times for a year for employment, but he was not allowed to join and subsequently when the Engineer refused, he raised the demand notice. On the other hand, R.K. Sharma, MW-1 has deposed that the workman left the job himself on 6th September, 1987. Since the oral evidence led by Sukhbir Singh is balanced by the oral evidence led by the management, it can not be said that the management had proved that the workman left the job himself and no such inference of abandonment can be drawn in the given circumstances. The action of the management in preventing the workman from attending to his duties after 6th September, 1987 amounts to "retrenchment" as defined in the Act and the termination of services of the workman as on 6th September, 1987 is held illegal and not proper.

10. However, it is admitted case that some employees of Improvement Trust were retrenched in January, 1988 after following the procedure laid down in the Act, particularly when the Improvement Trust stood superseded. It is obviously, because of supersession of Improvement Trust, Bhiwani that the work ceased and Sukhbir Singh, WW-1 had also admitted that some employees were retrenched in January, 1988 after paying them retrenchment compensation. It is but natural that had the workman been on rolls in January, 1988, he would have also been retrenched in January, 1988 alongwith others. The workman, therefore, shall be entitled to salary for the period from 6th September, 1987 to January, 1988 and he would also be paid one month's salary in lieu of notice as also retrenchment compensation as required under the law.

11. In the light of discussion above, it is held that though the termination of services of Sukhbir Singh on 6th September, 1987 was illegal and improper and that he had not left the job himself, but as discussed above the workman would have been covered amongst the employees retrenched in January, 1988, particularly, when Improvement Trust is superseded and as such, the workman would be entitled to back wages for the period from 6th September, 1987 to January, 1988 plus one month's wages in lieu of notice and also retrenchment compensation as required under the law. The termination of services of the petitioner is hereby set aside and the management is directed to pay the amount to the petitioner, as mentioned above, within a period of four months, from the date of this award, failing which the petitioner shall be entitled to interest at the rate of 12% per annum from the date of this award till actual payment. Both these issues are answered accordingly. The reference is answered accordingly, with no order as to costs.

The 3rd October, 1994.

B. R. VOHRA,

Presiding Officer,  
Industrial Tribunal-cum-Labour Court,  
Hisar.

Endorsement No. 2197, dated the 3rd October, 1994.

A copy, with spare copy, is forwarded to the Financial Commissioner and Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh for necessary action.

B. R. VOHRA,

Presiding Officer,  
Industrial Tribunal-cum-Labour Court,  
Hisar.

No. 14/13/87-6Lab./751.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Hisar in respect of the dispute between the workman and the management of Director, Central State Farm, Hisar *versus* Ranjit.

BEFORE SHRI B. R. VOHRA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, HISAR

Reference No. 301 of 90

Date of receipt : 20-10-89

Date of decision : 4-10-94

SHRI PANJIT S/O RAMJI LAL, V.P.O. MILAKPUR, TEHSIL HANSI,  
HISAR

.. Applicant

*versus*

DIRECTOR, CENTRAL STATE FARM, HISAR

.. Respondent-  
management

*Present:*

Shri T. C. Gupta for the workman.

Shri O. P. Jain for the management.

#### AWARD

In exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (for short, 'the Act'), the Governor of Haryana referred the following dispute between Ranjit and the above-mentioned management for adjudication to this Court,—*vide* Labour Department letter No. Hsr./158-89/43504-9, dated the 16th October, 1989:—

Whether the services of Ranjit were terminated or he left the job himself? In either event, to what relief is he entitled?

2. According to Ranjit workman he was appointed as Labourer in the year 1980 in the Central State Farm, Hisar but he was removed from the job in May, 1986, without giving him any notice, and without paying him any retrenchment compensation. The workman has, therefore, pleaded that the management has violated the provisions of section 25-F and as also Section 25-G of the Act. The workman therefore, prayed for reinstatement with full back wages and other benefits.

3. The management, in its written statement, stated that the petitioner had been engaged as daily paid labourer from the year 1980 to May, 1986, though he never completed 240 days service in any calendar year and that he used to be engaged as per requirement of labour. It was pleaded that the petitioner absented himself from the job in May, 1986 and he moved an application before the Conciliation Officer for the first time on 17th February, 1989. It was further pleaded that keeping in view his long absence, the name of the workman was struck off from the rolls of the farm and the question of termination did not arise in this case. The management, therefore, pleaded that provisions of the Act were not attracted in this case. Several preliminary objections were also raised by the management, as they are reflected in the following issues framed on 14th May, 1990 by my learned predecessor:—

(1) As per reference.

(2) Whether the claim petition is not maintainable?

- (3) Whether the workman is estopped by his own act and conduct?
- (4) Whether the petition of the workman is barred by *res judicata*?
- (5) Whether the workman did not complete the work for 240 days in 12 months? If so, to what effect?
- (6) Relief.

4. The parties led evidence in support of their rival claims. I have heard Shri T. C. Gupta, authorised representative of the workman and Shri O. P. Jain, authorised representative of the management and have gone through the case file. My findings on the above issues are as under: -

**Issue No. 1 :**

5. Ranjit, workman appeared as WW-1 and stated that he was appointed in 1980 in the farm as labourer and that he was removed from service in 1986 without giving him any notice and without paying him any retrenchment compensation. He however, admitted that he was a daily paid labourer and sometimes he used to work for 15 to 20 days in a month. He also admitted that no writting was given to him, when he was removed from the job.

6. The management examined Shri Ramraj, Fieldman as MW-1 and he claimed that the workman absented himself in the year of 1986 and he never approached thereafter for the job. The management also examined one Hari Prashad, Election Kanungo as MW-2 to prove the copy of voter's list of village Malikpur, showing the name of Ranjit, workman at Sr. No. 234 thereof, showing his age as 65 years as in the year of 1989.

7. It is admitted by Ranjit, WW-1 in his cross-examination that no formal termination order was passed, when he was removed from the job in May, 1986. It is also admitted by him that he was daily paid labour. The demand notice was raised by the workman only on 17th February, 1989 with effect after more than two and half years of the date of alleged termination. The case of management from the very beginning has been that the workman had absented himself and left on his own accord. This was also the plea raised by the management before the Labour-cum-Conciliation Officer. It has also come in evidence that in 1989, the age of Ranjit was 65 years as is depicted in the voter's list, copy of which is Ex. M-1 and it is to be noted that Hari Parshad, MW-2 was not at all cross-examined by the workman. In other words, in May, 1986, the workman was aged about 62 years. The cumulative effect of all these circumstances and in particular, the long silence of the workman in not raising a demand notice for over two and half years leads one to the irresistible conclusion that it was the workman, who abandoned his duties and once it is held so, there was no need to comply with the provisions of section 25-F of the Act. In similar circumstances, when the workman did not raise demand notice for over a year, abandonment of duty was presumed and the said finding of the Labour Court was upheld by Hon'ble High Court in the latest authority of *Teja Singh versus Punjab Water Supply and Sewerage Board and Others*, 1994 (68) FLR-146. The facts in the other authority reported as *Panipat Coop. Sugar Mills Limited versus Presiding Officer Labour Court, Ambala*, 1994 (68) FLR-152 are also similar to the facts of our case and in that case also, it was held that the workman had abandoned his employment *suo moto*.

8. So far as the authority of *D. K. Yadav versus J. M. A. Industries*, 1993-II, LLN-575, cited by Shri T. C. Gupta, authorised representative of the workman, is concerned, the said authority does not help the workman, because in this case, there was absence of workman for 8 days and he was deemed to have left the job in the light of the certified standing orders applicable to the company. On the other hand, the plea of the workman was that he reported for duties on the first day of his alleged absence and it was held that the principle of natural justice must be read into the standing orders. On the other hand, ours is case of abandonment of employment on account of long absence of about two and half years and coupled therewith is the circumstance of age of the workman, who having crossed 60 years, was physically not in a position to work as labourer and the age of the workman is another and strong factor to presume abandonment of employment by him.

9. In the light of discussion above, I hold that the workman himself abandoned the employment by absenting from duties and it is not case of termination of services and the workman is, thus, not entitled to any relief. The issue is answered accordingly.

**Issue Nos. 2, 3, 4 & 5 :**

10. All these issues were not pressed by the Authorised representative of the management and were conceded to by him during arguments. All these issues are, therefore, answered against the management.

## Issue No. 6—Relief :

11. In view of my findings on the above issues, the termination of services of the workman is held justified and in order and he is not entitled to relief in this case. The reference is answered accordingly, with no order as to costs.

B. R. VOHRA,

Presiding Officer,  
Industrial Tribunal-cum-Labour Court,  
Hisar.

The 4th October, 1994.

Endorsement No. 2219, dated the 6th October, 1994.

A copy, with spare copy, is forwarded, to Financial Commissioner and Secretary to Government Haryana, Labour and Employment Departments Chandigarh for necessary action.

B. R. VOHRA,

Presiding Officer,  
Industrial Tribunal-cum-Labour Court,  
Hisar.

The 31st May, 1994

No. 14/13/87-6Lab./756-A.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Central Act No. XIV of 1947) the Governor of Haryana is pleased to publish the following award of Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak in respect of the dispute between the workman and the management of M/s. Executive Engineer JIM Feeder, Division, Rohtak *versus* Smt. Kamlesh Kumari :—

IN THE COURT OF SHRI P. L. KHANDUJA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ROHTAK

Reference No. 86 of 1990.

*between*

SMT. KAMLESH KUMARI W/O SHRI ATTAR SINGH, VILL. BAHALGARH, P.O. MATANHAIR DISTRICT ROHTAK, WORKMAN.

*and*

THE MANAGEMENT OF M/S EXECUTIVE ENGINEER, J.L.N. FEEDER, DIVISION, ROHTAK

*Present :*

Shri B.S. Suhag, A.R. for the workman.

None for the management (*ex parte*).

#### AWARD

In exercise of powers conferred by sub Clause (c) of sub section (1) of Section 10 of the Industrial Disputes Act, 1947, the Governor of Haryana has referred the following dispute, between the parties, named above, to this Court, for adjudication,—*vide* Labour Department Endorsement No. S.O.V./Roh/836-90/36029-34, dated 11th September, 1990:—

Whether the termination of services of Smt. Kamlesh Kumari is justified and in order? If not, to what relief she is entitled?

2. After receipt of the reference order usual notices were issued to the parties. The workwoman appeared and filed his claim statement that she was working with the employer since 5th June, 1987 as Beldar on the pay scale of Rs. 350-5-360/8-400/10-430 plus usual allowances and has not given any chance of any complaint during her tenure of period of service; the management terminated her service on 15th May, 1989 without assigning any reason or reasonable cause even then the work and conduct of the workman was always quite satisfactory; the workman was appointed on regular basis and completed more than 240 days, therefore, the workman is entitled to be heard before giving any sort of punishment to her, therefore, the above said termination is absolutely illegal, unwarranted and the against the principal of natural justice; that at the time of terminated no notice was given to the workman and no

enquiry was held by the management and seniority list was displaced at the time of termination and as chargesheet was not issued by the management and no notice was sent to the Government on the prescribed form and nor the management paid retrenchment compensation to the workman, therefore, the management contravened section 25-F of the Industrial Disputes Act; the some junior Beldar are also working in the office of the management and the management has not adopted the procedure last come first to, therefore, the management have contravened section 25-F and section 25-H of the Industrial Disputes Act and hence this claimstatement was filed.

3. Reply of the claimstatement filed by the management is that no sanction of the post has been received from the Government and on this account the termination notice was given and it is submitted that the plaintiff was appointed on *ex gratia* grant of government to the workman but her sanction was not received; the proper notice was given to the plaintiff and on account of not receiving the sanction from the Government, her services were terminated; that the plaintiff was given a compensation of Rs. 100102.45 paise by the Commissioner Workman's Compensation Act. circle, Rohtak on account of death of her husband, the amount of award since been deposited by the department in his office and the case may be dismissed with costs.

4. Replication was filed by the workwoman, on the pleading of the parties, the following issues were frame :—

(1) As per terms of reference ?

(2) Relief ?

5. My findings on the above issues are as under :—

#### Issue No. 1:

6. The workman has come into witness box as WW-1 and closed her evidence. The management has examined Shri Bhagwan Dass, S.D.O., J.L.N. Jhanjhar, who deposed that the workman was appointed on *ad hoc* basis and the workman has also been appointed on *ad hoc* basis but as no government order has been received for the appointment of the workman. She was not required come in the office. She was paid the amount after the death of her husband. She had married with her JETH i.e. elder brother of her husband. One child has been born of them of that marriage.

7. Shri Bhagwan Dass admitted that any legal heir of the deceased employees is appointed on the compensate ground,—*vide* order Ex.M-1 dated 13th July, 19971.

8. The applicant has made statement that she was appointed as Beldar on 10th June, 1987 and she was terminated on 15th May, 1989 without paying any compensation, notice and notice pay etc. and hence the termination as pleaded which is illegal and unwarranted.

9. Shri B.S. Suhag, A.R. for the workman made submission that had the service the workwoman completed for more than 240 days in a year and she was entitled to the relief as given in the section 25-F of the Industrial Disputes Act. I do agree that as the workman is to prove that the work for more than 240 days and she has been removed without compliance of section 25-F of the Industrial Disputes Act and that termination of service is illegal and invalid and set aside hence I decide this issue in favour of the workwoman.

#### Issue No. 2 (Relief) :

10. In view of my finding on the above issue I accept the claimpetition of the workwoman and I hold that the workwoman is entitled to be reinstated with continuity of service and with 20% of back wages. The reference is answered and returned accordingly with no orders as to costs.

P. L. KHANDUJA,

Dated: 28th April, 1994.

Presiding Officer,  
Industrial Tribunal/Labour Court,  
Rohtak.

Endorsement No. 1221, dated the 29th April, 1994.

A copy is forwarded to the following :—

1. Labour Commissioner, Haryana, Chandigarh.
2. Labour Officer, Rohtak.

P. L. KHANDUJA,

Presiding Officer,  
Industrial Tribunal/Labour Court  
Rohtak.